

Julie Chen Clocker
Assistant General Counsel



November 12, 2004

1515 North Courthouse Road
Suite 500
Arlington, VA 22201

Phone 703.351.3071
Fax 703.351.3676
julie.c.clocker@verizon.com

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: WC Docket No. 04-313; CC Docket No. 01-338:

Dear Ms. Dortch:

Attached is Verizon's Opposition to the Petition for Emergency Clarification and/or Errata filed by the Association for Local Telecommunications Services on August 27, 2004. Verizon had originally filed its Opposition on September 7, 2004 prior to the Commission's publication of a comment cycle on October 20, 2004. Accordingly, Verizon is refiling its Opposition pursuant to that cycle.

Very truly yours,

A handwritten signature in black ink, appearing to read "Julie Chen Clocker".

Julie Chen Clocker

**Before the
Federal Communications Commission
Washington, D.C. 20554**

)	
In the Matter of)	
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of the Incumbent Local)	
Exchange Carriers)	
)	

**OPPOSITION OF VERIZON¹ TO THE PETITION FOR
EMERGENCY CLARIFICATION AND/OR ERRATA**

On August 27, 2004, the Association for Local Telecommunications Services and eight local exchange carriers filed a Petition for Emergency Clarification and/or Errata ("Petition")² concerning the *Interim UNE Order*.³ The Petition purportedly seeks "clarification" that interim UNE rates may be reduced as well as increased as directed by a state commission.⁴ While the

¹ The Verizon telephone companies ("Verizon") are the companies affiliated with Verizon Communications Inc. identified in the list attached as Exhibit A hereto.

² Association for Local Telecommunications Services, Alpheus Communications, LP, Cbeyond Communications, LLC, Conversent Communications, LLC, GlobalCom, Inc., Mpower Communications Corp., New Edge Networks, Inc., OneEighty Communications, Inc., and TDS Metrocom, LLC., *Petition for Emergency Clarification and/or Errata*, Docket Nos. 04-313 and 01-338, filed August 27, 2004 ("Petition").

³ *Unbundled Access to Network Elements, Review of the Section 251 Obligations of Incumbent Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, WC Docket No. 04-313 and CC Docket No. 01-338, FC 04-179 (2004) ("UNE Interim Order").

⁴ *Petition*, 1.

Interim UNE Order already goes beyond the Commission's lawful authority,⁵ it should not exacerbate the problem by granting Petitioners' request to allow uneconomic TELRIC rates to be reduced even further. Accordingly, Petitioners' request should be denied.

The *Interim UNE Order* is clear that rates may be superseded only by state commission orders that raise rates and the Commission should not grant petitioners' request to allow further unbundling. In the *Interim UNE Order*, the Commission established an Interim Period during which it reimposed a requirement on ILECs to provide unbundled access to switching, enterprise market loops and dedicated transport under the same rates, terms and conditions that applied under their interconnection agreements as of June 15, 2004. The Commission also provided that these rates may only be "superseded by (1) voluntarily negotiated agreements, (2) an intervening commission order affecting specific unbundling obligations (*e.g.*, an order addressing a pending petition for reconsideration), or (3) (with respect to rates only) a state public utility commission order *raising* the rates for network elements."⁶ Petitioners contend that because the Commission did not also "explicitly provide that June 15, 2004 UNE rates would also be superseded by rate *reductions* ordered by state Commissions" and the Commission did not provide explanations for such exclusion, the exclusion of rate reductions must be "apparently an oversight rather than a considered decision."⁷

Petitioners' attempt to change the Commission's *Interim UNE Order* by way of "clarification," however, must fail for several reasons. First, there is no ambiguity in the *Interim*

⁵ See Verizon's Petition for a Writ of Mandamus, in *United States Telecom Association, et al., v. Federal Communications Commission and United States of America*, nos. 00-1012 et al., D.C. Cir., filed August 23, 2004.

⁶ *UNE Interim Order*, ¶ 1 (emphasis supplied).

⁷ *Petition*, 3 (emphasis in original).

UNE Order that the rates set forth in interconnection agreements as of June 15, 2004, may only be superseded by an order by state commissions raising such rates, not lowering them. That is precisely what the Commission stated. And that the June 15, 2004 UNE rates may only be superseded by state commission orders raising (and not lowering) rates was the Commission's intended result is further evidenced by the fact that the Commission repeated the same rule *three* more times in its *Interim UNE Order*, using the same language.⁸

Second, that the Commission intended the rates to be superseded only by state commission orders raising the rates is further supported by the structure set forth in the Transition Period. There, the Commission proposed that, in the absence of a Commission ruling that switching is subject to unbundling, an ILEC shall be required to lease the switching element to a requesting carrier in combination with shared transport and loops at a rate equal to the *higher* of (1) the rate in effect as of June 15, 2004 plus one dollar, or (2) the rate the state commission establishes, if any, between June 16, 2004 and six months after Federal Register publication of this *Interim UNE Order*, for that element plus one dollar.⁹ The Commission repeated the same structure for enterprise loops and dedicated transport. If the Commission had intended the rates to be superseded by state orders both raising and decreasing such rates, then the Transition Period would have provided that *either* the rate in effect on June 15, 2004 *or* the

⁸ *Interim UNE Order*, ¶ 16 ("These rates, terms, and conditions shall remain in place . . . , except to the extent that they are or have been superseded by . . . (3) (with respect to rates only) a state public utility commission order raising the rates for network elements"); *Interim UNE Order*, ¶ 21 ("These rates, terms, and conditions shall remain in place . . . except to the extent that they are or have been superseded by . . . (3) (with respect to rates only) a state public utility commission order raising the rates for network elements"); *Interim UNE Order*, ¶ 29 ("These rates, terms, and conditions shall remain in place during the Interim Period, except to the extent that they are or have been superseded by . . . (3) (with respect to rates only) a state public utility commission order raising the rates for network elements").

⁹ *Id.*, ¶ 29.

rate subsequently ordered by the state commission be increased by one dollar, not *the higher of the two*. Indeed, the Commission expressly noted that the *Interim UNE Order* does not preclude state commissions from “imposing price increases *greater* than those specified in the Order” during the Transition Period, but again does not make the same note with respect to price decreases.¹⁰ In short, there is simply no ambiguity that the Commission intended rates to be superseded *only* by a state commission order raising such rates, not lowering them.

Finally, because the Commission does not have the authority to require unbundling where there is no impairment finding,¹¹ allowing state commission ordered *reductions* in rates based on vacated unbundling criteria would constitute an even more egregious flouting of the D.C. Circuit’s mandate in *USTA II*.¹² The unbundling rules at issue were vacated not only because they improperly delegated unbundling decisions to the states, but also because they were based on unlawful national impairment findings. In issuing the *Interim UNE Order*, the Commission thus has already perpetuated unbundling rules (and the uneconomic TELRIC prices that accompany them) for narrowband facilities that were vacated by the D.C. Circuit without confronting any of the issues the Court had identified and despite the overwhelming evidence demonstrating the existence of numerous competitive alternatives and the absence of impairment in many markets.¹³ Thus, to enable state commissions to *reduce* rates even further below their

¹⁰ *Id.*, 16 fn. 69 (emphasis added).

¹¹ See 47 U.S.C. § 251(d)(2); *USTA v. FCC*, 290 F.3d 415, 425 (D.C. Cir. 2001) (“USTA I”), cert. denied, 538 U.S. 940 (2003). (Congress has made impairment the “touchstone” of the unbundling inquiry); *AT&T Corp. v. Iowa Util. Bd.*, 525 U.S. 366, 388-389, 391-92, 397 (1999) (Commission may not order unbundling without impairment).

¹² *USTA v. FCC*, 359 F.3d 554, 574 and 587 (D.C. Cir. 2004) (“USTA II”).

¹³ See *id.* 587.

current uneconomic levels would further exacerbate the effects of the illegal unbundling regime. Additionally, allowing rate reductions would go beyond even the Commission's own justification for reimposing unbundling obligations in the *Interim UNE Order*. Specifically, the Commission's stated reason for reimposing those requirements was that, in its view, the interim rules would "minimize disruptive effects and marketplace uncertainty" that could result from "the abrupt elimination of particular unbundling requirements."¹⁴ Allowing further decreases in UNE rates to go into effect would obviously do nothing to minimize any potential disruptive effects that might result from eliminating requirements to unbundle at TELRIC rates. On the contrary, it would merely increase carriers' dependence on the subsidy they already receive from TELRIC rates, and exacerbate the significant costs that both the Commission and the D.C. Circuit have recognized result from imposing an unbundling obligation in the absence of impairment.¹⁵

¹⁴ *Interim UNE Order*, ¶ 20.

¹⁵ See *USTA I*, 427 ("Each unbundling of an element imposes costs of its own, spreading the disincentive to invest in innovation and creating complex issues of managing shared facilities."); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶141 (2003), ("unbundling is one of the most intrusive forms of economic regulation.")

Conclusion

For the reasons stated above, the Commission should deny the Petition for Emergency Clarification and/or Errata.

Respectfully submitted,

Of Counsel:
Michael E. Glover



Edward Shakin
Julie Chen Clocker
VERIZON
1515 North Court House Road
Suite 500
Arlington, VA 22201-2909
(703) 351-3071

Counsel for the Verizon telephone companies

September 7, 2004

EXHIBIT A

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.